

## 37 Am. Jur. 2d Fraud and Deceit § 35

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### Fraud and Deceit

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### II. Elements and Requisites

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##### 2. Relationship of Parties

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### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1 to 7, 26

### Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 62](#) (Complaint, petition, or declaration—Allegation—Confidential relationship—Reliance on representation)

Where a confidential or fiduciary relationship exists, it is the duty of the person in whom the confidence is reposed to exercise the utmost good faith in the transaction with due regard to the interests of the one reposing confidence,<sup>1</sup> to make full and truthful disclosures of all material facts,<sup>2</sup> and to refrain from abusing such confidence by obtaining any advantage to himself or herself at the expense of the confiding party.<sup>3</sup> A fiduciary duty is a duty of loyalty;<sup>4</sup> it is a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence.<sup>5</sup> A fiduciary duty arises out of a confidential relationship which exists when one party gains the confidence of the other and purports to act or advise with the other's interest in mind<sup>6</sup> or from an informal relationship where one person trusts in and relies upon another, whether the relation is a moral, social, domestic, or purely personal one.<sup>7</sup> A fiduciary duty extends to every possible case in which there is confidence reposed on one side and the resulting superiority and influence on the other; the rule embraces both technical fiduciary relations and those informal relations which exist whenever one person trusts in and relies upon another.<sup>8</sup> The existence of a fiduciary relationship necessarily assumes that one of the parties has a duty to act for, or to give advice for, the benefit of the other upon matters within the scope of the fiduciary relationship.<sup>9</sup> Fiduciary obligations generally come into play between two parties to a contract when one party's vulnerability is so substantial as to give rise to equitable concerns underlying the protection afforded by the law governing fiduciaries.<sup>10</sup> Should an advantage be obtained by a fiduciary, he or she will not be permitted to retain the benefit, and the transaction will be set aside even though it could not have been impeached had no such relation existed,<sup>11</sup> whether the unconscionable advantage was obtained by misrepresentations or artifice,<sup>12</sup> concealment or suppression of material facts,<sup>13</sup> or undue

influence.<sup>14</sup> Even if a fiduciary does not obtain a benefit from a third party by violating his or her duty, such fiduciary may be required to forfeit the right to compensation for his or her work.<sup>15</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Term “defalcation,” as commonly used, can encompass a breach of fiduciary obligation that involves neither conversion, nor taking and carrying away another’s property, nor falsity. [Bullock v. BankChampaign, N.A., 133 S. Ct. 1754 \(2013\)](#).

Under Florida law, fiduciaries are forbidden to make any profit or acquire any other personal benefit or advantage that is not also enjoyed by fiduciary beneficiary, and if they do, they may be compelled to account to beneficiary in appropriate action. [Southland Health Services, Inc. v. Bank of Vernon, 887 F. Supp. 2d 1158 \(N.D. Ala. 2012\)](#).

For purposes of a fraud claim under New York law premised on an omission, a fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation. [First Hill Partners, LLC v. BlueCrest Capital Management Ltd., 52 F. Supp. 3d 625 \(S.D. N.Y. 2014\)](#).

The circumstances which may create a fiduciary relationship are so varied and so difficult to foresee that it is unwise for courts to attempt to make comprehensive definitions; as such, fiduciary duties may arise wherever faith, confidence, and trust is reposed by one party in another’s judgment and advice. [UBS Financial Services, Inc. v. Aliberti, 483 Mass. 396, 133 N.E.3d 277 \(2019\)](#).

## [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [Steinert v. Winn Group, Inc., 83 F. Supp. 2d 1234 \(D. Kan. 2000\) \(applying Kansas law\); Williams-Garrett v. Murphy, 106 F. Supp. 2d 834 \(D.S.C. 2000\) \(applying South Carolina law\); Safeway Transp., Inc. v. West Chambers Transp., Inc., 100 F. Supp. 2d 442 \(S.D. Tex. 2000\) \(applying Texas law\); Dalton v. Camp, 138 N.C. App. 201, 531 S.E.2d 258 \(2000\), decision rev’d on other grounds, 353 N.C. 647, 548 S.E.2d 704 \(2001\); In re Estate of Stevenson, 2000 SD 24, 605 N.W.2d 818 \(S.D. 2000\).](#)
- <sup>2</sup> [§ 201.](#)
- <sup>3</sup> [In re Estate of Stevenson, 2000 SD 24, 605 N.W.2d 818 \(S.D. 2000\); Stephenson v. LeBoeuf, 16 S.W.3d 829 \(Tex. App. Houston 14th Dist. 2000\).](#)
- <sup>4</sup> [Great Rivers Co-op. of Southeastern Iowa v. Farmland Industries, Inc., 198 F.3d 685, 45 Fed. R. Serv. 3d 833 \(8th Cir. 1999\) \(applying Kansas law\); Moody v. Stribling, 127 N.M. 630, 1999-NMCA-094, 985 P.2d 1210 \(Ct. App. 1999\).](#)
- <sup>5</sup> [Snow Pallet, Inc. v. Monticello Banking Co., 367 S.W.3d 1 \(Ky. Ct. App. 2012\).](#)
- <sup>6</sup> [Gonzalez v. Union Pacific R.R. Co., 282 Neb. 47, 803 N.W.2d 424 \(2011\).](#)
- <sup>7</sup> [Young v. Fawcett, 376 S.W.3d 209 \(Tex. App. Beaumont 2012\).](#)
- <sup>8</sup> [Masztal v. City of Miami, 971 So. 2d 803 \(Fla. 3d DCA 2007\).](#)
- <sup>9</sup> [BBS Power Mod, Inc. v. Prestolite Elec., Inc., 71 F. Supp. 2d 194 \(W.D. N.Y. 1999\) \(applying New York law\);](#)

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Shivvers v. Hertz Farm Management, Inc., 595 N.W.2d 476 (Iowa 1999); Teadt v. Lutheran Church Missouri Synod, 237 Mich. App. 567, 603 N.W.2d 816 (1999); McConnell v. Hunt Sports Ent., 132 Ohio App. 3d 657, 725 N.E.2d 1193 (10th Dist. Franklin County 1999); Daktronics, Inc. v. McAfee, 1999 SD 113, 599 N.W.2d 358 (S.D. 1999).

<sup>10</sup> City of Hope Nat. Medical Center v. Genentech, Inc., 43 Cal. 4th 375, 75 Cal. Rptr. 3d 333, 181 P.3d 142 (2008).

<sup>11</sup> Vail v. Vail, 233 N.C. 109, 63 S.E.2d 202 (1951).

<sup>12</sup> Vail v. Vail, 233 N.C. 109, 63 S.E.2d 202 (1951).

<sup>13</sup> § 201.

<sup>14</sup> Gray v. Gray, 246 Ala. 627, 22 So. 2d 21 (1945).

As to the distinction between causes of action for fraud and undue influence, see §§ 15, 16.

<sup>15</sup> ERI Consulting Engineers, Inc. v. Swinnea, 318 S.W.3d 867 (Tex. 2010).

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